IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

AS.No. 546 of 1992()

OS.267/1989 of PRINCIPAL SUB COURT, PALAKKAD
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APPELLANT - PLAINTIFF:

T.K. RATNABABU,
RESIDING AT THUPPALANGOTTU
KALAM, KARINGARAPPULLY, PALAKKAD.

BY ADV. SRI.A.P.CHANDRASEKHARAN
SRI.G.SREEKUMAR

RESPONDENTS - DEFENDANTS:
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1. **P.A. VISWANATHAN,**
   RESIDING AT THALI, KASABA AMSOM,
   KOZHIKODE TALUK (DIED)

2. **P.V. DAMODARA SHARMA,**
   RESIDING AT DO. DO. (DIED)

3. **P.V. RAMAKRISHNAN, DO. DO.**

4. **P.V. JAYARAMAN, DO. DO.**

5. **P.V. RANGANAYAKI, DO. DO.**

6. **L.V. ANANTHALAKSHMY, DO. DO.**

7. P.V. RADHAMANAY, DO. DO.

8. K.R. PARVATHY, DO. DO.

9. RAJAMMAL, DO.. DO.

10. P.V. DAMODHARA SHARMA, DO. DO. (DIED)

11. P.V. VENUGOPAL, DO. DO.

12. P.V. KRISHNAMOORTHY, DO. DO.

13. P.V. RANGANAYAKI, DO. DO.

14. P.V. SEETHALAKSHMY, DO. DO.

ADDITIONAL RESPONDENTS IMPLEADED:
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15. JANAKY, W/O. LATE P.V. DAMODARA SHARMA, 18/553, THALI, KASABA AMSOM, KOZHIKODE.

16. PANKAJAM, W/O. DAMODARA SHARMA, RESIDING AT 20, VEERARAGHAVA KOUNDER STREET, DHARMAPURI, TAMIL NADU.

17. VEKATESWARAN, S/O. DO. DO.

18. BALAJI (MIOR 7 YEARS OLD), S/O. DO. REPRESENTED BY GUARDIAN AND MOTHER BY R18 PANKAJAM.

19. MEENAKSHY, W/O. P.A. VISWANATHAN, AGED 70 YEARS, RESIDING AT 27, AISWARYA NIVAS, MARUTHAM NAGARA VADAVALLI, COIMBATORE.

20. PRAKASH, S/O. DO. AGED 45 YEARS, DO. DO. DO.

21. RAMAKRISHNAN, S/O. DO. AGED 40 YEARS, DO. DO.

22. SANDHYA, D/O. DO. AGED 50 YEARS, DO. DO. DO.

23. SUKUMARAN, HUSBAND OF LATE SANTHI, AGED 45 YEARS, DO. DO. DO.

24. DIVYA, MINOR 14 YEARS, D/O. LATE SANTHI, REPRESENTED BY FATHER AND GUARDIAN SREE SUKUMARAN (R23).

LEGAL HEIRS OF THE DECEASED 1ST RESPONDENT ARE ADDITIONAL RESPONDENTS 19 TO 24, VIDE ORDER DATED 20.2.2007 ON I.A. NO.1369 OF 2006.

ADDITIONAL RESPONDENTS 15 TO 18 ARE THE LEGAL HEIRS OF DECEASED R2 AND R10 VIDE ORDER DATED 6.1.2003 ON CMP NO.2287 OF 1994.

R23(FATHER) IS APPOINTED AS THE GUARDIAN OF THE MINOR 24TH RESPONDENT VIDE ORDER DATED 20.2.2007 ON I.A. NO.1368 OF 2006.

BY ADV. SRI.A.P.CHANDRASEKHARAN
SRI.G.SHRI KUMAR

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 6590 OF 1992 IN
A.S. NO. 318 OF 1992

DISMISSED.

7.3.2007 **ID/-. K. PADMANABHAN NAIR, JUDGE.**

K. PADMANABHAN NAIR, J.

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A.S. NO. 546 OF 1992

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Dated this the 7th day of March, 2007

J U D G M E N T

The defeated plaintiff in O.S. No.267 of 1989 on the file of the Sub Court, Palakkad is the appellant. The challenge in the appeal is directed against the decree and judgment passed by the court below dismissing the suit filed by the plaintiff for specific performance of an agreement for sale. The suit property is owned by the respondents. Appellant and respondents entered into an agreement for sale by which the respondents had agreed to sell the suit property to the appellant. The agreement was executed on 31.7.1982. In the agreement the respondents had asserted that they are the owners of the property and they were in possession and management of the same. It was further stated that in respect of the suit property a dispute was pending before the Taluk Land Board. The sale consideration was fixed as Rs.40,000/-. At the time of execution of the agreement, an amount of Rs.6,000/- was paid by the respondents and received by the appellant as advance. It was agreed that the sale deed

will be executed within one year from the date of final order in the proceedings pending before the Taluk Land Board.

2. The appellant filed the suit alleging that on the date of agreement itself he was put in possession of the property by the respondents. It was alleged that the appellant made several demands to the respondents to execute the sale deed and finally issued a notice on 2.1.1989 demanding execution of the sale deed. It was averred that the respondents received the notice and send a reply raising false and untenable contentions. It was alleged that the appellant was ready and willing to perform his part of the contract. Hence the suit.

3. The respondents admitted the execution of the agreement and receipt of advance. It was contended that the final order in the proceedings before the Taluk Land Board was passed on 24.9.1982 and the appellant was aware of that order, but the suit was filed in the year 1989. It was contended that the suit ought to have been filed on or before 24.9.1983 and hence the suit is barred by limitation. It was contended that the appellant was not ready and willing to perform his part of the

contract. Hence he is not entitled to get any relief.

4. The trial court found that the suit was barred by limitation and dismissed the same. Challenging that decree and judgment, this appeal is filed.

5. The only point arising for consideration is whether the suit was barred by limitation.

6. **The point:** Respondents are the owners of the suit property. They entered into an agreement for sale with the appellant on 31.7.1982. The sale consideration was fixed at Rs.40,000/- and the respondents received an amount of Rs.6,000/- as advance. It was agreed that the sale deed will be executed within one year from the date of final order in a proceeding pending before the Taluk Land Board.

7. The relevant portion of the agreement reads as follows:

8. The evidence on record shows that there was a suo motu proceedings as SM No.1270 of 1977 pending before the Taluk Land Board in respect of the excess land held by Shri Krishnan @ Kitta, father of the appellant. The Taluk Land Board initiated proceedings treating that the suit property was also owned by the father of the appellant. Initially an order was passed on 29.3.1980. That order was challenged by the land owner before this Court in CRP No.1878 of 1980. The father of the appellant, Krishnan, also filed CRP No.1232 of 1980. Both CRPs were heard together. The order of the Taluk Land Board

was set aside and the case was remanded. After remand, the Taluk Land Board passed Exhibit A4 order on 24.9.1982 by which it was held that the suit property belonged to the respondents. The case referred to in Exhibit A1 is SM No.1270 of 1977 which was pending before the Taluk Land Board on the date of execution of the agreement. A reading of Exhibit A4 order shows that the dispute in that case was whether an area of 7.97 acres, which is the subject matter of Exhibit A1 agreement, belong to the predecessor-in-interest of the respondents or the father of the appellant. It is admitted by the father of the appellant as well as the respondents that the properties belonged to the predecessor in interest of the respondents and father of the appellant had no title or possession over the same. That contention was accepted by the Land Board and decree schedule property was excluded from the return of the assessee. After referring to other contentions, the Taluk Land Board came to the conclusion that in spite of the exclusion of 7.97 acres involved in this case, the assessee was in possession of 1.43 acres as surplus land. Since he had already filed an option statement, the Taluk Land Board

directed to take that property as excess land. Challenging that part of the order by which the Taluk Land Board had held that the assessee was liable to surrender 1.43 acres of land, the assessee filed C.R.P. No.3696 of 1987 before this Court. That CRP was disposed of on 20.8.1987. The suit was filed only on 11.7.1989. The appellant had contended that he had made several oral demands. That averment was denied by the respondents. There is no reliable evidence to prove that fact. The record shows that the appellant caused to send Exhibit A6 lawyer notice on 2.1.1989 demanding execution of the sale deed. Even in Exhibit A6 the appellant had no case that he made any demand within one year from the date of Exhibit A4 order of the Taluk Land Board or Exhibit A5 order passed by this Court in CRP No.3696 of 1987.

9. Learned counsel for the appellant strenuously argued before me that in Exhibit A1 it is clearly stated that the sale deed is to be executed within one year from the date of 'final order' of the Taluk Land Board. It is argued by the appellant that proceedings pending before the Taluk Land Board became final

only when the High Court disposed of CRP No.3696 of 1987 on 20.8.1987 and Exhibit A5 is the final order referred to in Exhibit A1. It is argued that the cause of action arose only one year after the order passed by the High Court, i.e., 20.8.1988 and the suit was filed within three years from that date. It was argued that the present suit was filed on 11.7.1989 and the same is within time and the court below without considering the legal position dismissed the suit.

10. Learned counsel appearing for the respondents contended that only 7.97 acres of land was covered by the agreement and the parties were not concerned about the other lands held by the father of the appellant. It was contended that what exactly were the other properties held by Krishnan were not known to the respondents on the date of the agreement and the parties had agreed to execute the sale deed within one year from the date of final order of the Taluk Land Board in respect of Exhibit A1 property. It is argued that Exhibit A4 order would show beyond any reasonable doubt that the Taluk Land Board had accepted the contention raised by the father of the appellant

as well as the respondents that the respondents are the owners of Exhibit A1 property and found that this land does not form part of the lands owned by the assessee. The Taluk Land Board accepted the contention of the assessee and the respondents. Neither the assessee nor the respondents could have filed a revision before this Court challenging that finding. The Civil Revision Petition was filed only against the order of the Taluk Land Bord by which the assessee was asked to surrender 1.43 acres. As such the time will begin to run from 24.9.1982, the date of Exhibit A4. The plaintiff ought to have filed the suit within 4 years from the date of Exhibit A1 agreement.

11. I have carefully gone through the pleadings and evidence adduced. On the date of Exhibit A1 agreement, Exhibit A2 proceedings were pending before the Taluk Land Bord. That was a suo motu proceedings. In that proceedings Sate took up a stand that Exhibit A1 property belonged to Krishnan @ Kitta. The respondents and Krishnan had contended that the respondents are the owners of the property. Initially the Taluk Land Board did not accept that contention and passed Exhibit A2

order. The assessee as well as Shri P.V. Damodara Sharma filed Civil Revision Petitions challenging that order. This Court set aside the order and remanded the matter. Thereafter Exhibit A4 order was passed on 24.9.1982 upholding the contention of the respondents. In view of Exhibit A4 order the proceedings in respect of Exhibit A1 had became final. The State did not challenge that part of the order. It is true that Krishnan filed CRP No.3696 of 1987 before this Court. The subject matter of the CRP was some other properties. So far as the suit property was concerned, Exhibit A4 order passed by the Taluk Land Board on 24.9.1982 was the final order. So the sale deed ought to have been executed within one year from that date and the suit ought to have filed on or before 20.9.1986. But the suit was filed only on 11.7.1989. It is also pertinent to note that even in Exhibit A6 notice, the appellant had not stated that the parties were aware of the pendency of the revision before this Court and the respondents had agreed to execute the sale deed after the disposal of the revision. There is no merit in the contention of the appellant that he is entitled to get 4 years from the date of the

order passed by this Court in CRP No.3696 of 1987. The finding of the trial court that the suit is barred by limitation is correct and does not call for any interference. It is only to be confirmed.

In the result, the appeal is dismissed. There will be no order as to costs.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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A.S. NO. 546 OF 1992

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J U D G M E N T

7TH MARCH, 2007